

APPEAL NO. 040171
FILED MARCH 4, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 16, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, while in the course and scope of employment, and because the claimant did not sustain a compensable injury, he did not have disability. The claimant appealed, arguing that the hearing officer's determinations are against the great weight and preponderance of the evidence. The appeal file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

The claimant contends that on _____, he sustained a back injury while performing his job duties and that he has had disability as a result of that injury. The claimant testified that he lifted boxes of ceramic tile and that he felt immediate back pain. The claimant testified that he reported his injury to his employer on July 21, 2003, and that he sought medical treatment on that date. The claimant was diagnosed with a back strain. The claimant contends that he was taken off work for a few days and then released to light duty. The claimant testified that on July 31, 2003, he sought medical attention at the hospital emergency room and that he was diagnosed with a back strain. The claimant contends that on August 6, 2003, he was terminated from his employment. The claimant contends that he has not worked since July 31, 2003, to the date of the CCH because of his back injury. There was conflicting evidence presented with regard to whether the claimant sustained an injury in the course and scope of employment.

The claimant had the burden to prove that he sustained an injury as defined by Section 401.011(26). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer was not persuaded that the claimant sustained an injury in the course and scope of employment on _____, based on the claimant's testimony and medical evidence presented. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

In that we are affirming the hearing officer's determination that the claimant did not sustain a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge